

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
THOMAS CHAIPIS : ORDER DISMISSING EXCEPTION
d/b/a MAGOO'S CAFE : DTA #800913
: :
for Revision of Determination or for Refund of :
Sales and Use Taxes under Articles 28 and 29 of :
the Tax Law for the Period December 1, 1979 :
through November 30, 1982. :

On March 18, 1988 the Division of Taxation made a motion before the Tax Appeals Tribunal to dismiss an exception by the petitioner on the grounds that it was not filed within the thirty day period prescribed in Tax Law section 2006(7) and accordingly, the Tribunal lacks jurisdiction.

The Tribunal grants the motion.

Tax Law section 2010(4) provides:

"4. A determination issued by an administrative law judge shall finally decide the matters in controversy unless any party to the hearing takes exception by timely requesting a review by the tax appeals tribunal as provided for in section two thousand six of this article."

Tax Law section 2006(7) authorizes the Tribunal:

"7. To provide for a review of the determination of an administrative [sic] law judge if any party to a proceeding conducted before such administrative law judge, within thirty days after the giving of notice of such determination, takes exception to the determination. . . . The tribunal in its discretion may grant oral argument. The tribunal may also grant an extension of time for filing an exception provided an application for such extension is filed within the time period for taking exception to a determination under this subdivision, and if good cause is show. . . ."

The regulations adopted by the Tax Appeals Tribunal to implement the statute provide:

"(a) Filing of exception. Within 30 days after the giving of notice of the determination of an administrative law judge, any party may take exception to such determination and seek review thereof by the tribunal, by filing an exception with the secretary. The tribunal may extend the 30-day period for filing an exception, provided an application for extension is filed within such period and served on the other party, and if good cause is shown. 'Good cause' depends on the circumstances of each case, but would include any cause which appears to an ordinarily prudent person as a reasonable ground for failure to file an exception within the prescribed period." (20 NYCRR 3000.11[a].) (Emphasis added.)

In this case, the determination of the Administrative Law Judge was rendered on October 22, 1987. The Notice of Exception was mailed December 21, 1987 and received on December 29, 1987. The petitioner did not request or receive an extension of the thirty day period for filing an exception,

Accordingly, the motion of the Division is granted.

DATED: Albany, New York
NOV 03 1988

~~John P. Dugan~~
President

Francis R. Koenig
Commissioner